

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10436 of 1996

with

CIVIL APPLICATION No. 9152 of 1999

with

CIVIL APPLICATION No. 12214 of 1999

with

CIVIL APPLICATION No. 12856 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHANKERBHAI M KOTWAL

Versus

STATE OF GUJARAT

Appearance:

MR JA ADESARA with RC PATHAK for Petitioner
MR PARESH UPADHYAY for Respondents

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/11/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. Civil Application No. 12856 of 1999 is allowed. The amendment shall be carried out within a period of three weeks from today.

3. The petitioner in this petition was, under Order dated 5th May, 1986, appointed as Additional Shroff by the District Treasury Officer, Sabarkantha at Sub-Treasury, Bhiloda. Under the said order, the petitioner was engaged for the days on which the Sub-Treasury received currency worth more than Rs. 10,000/= and he was being paid Rs. 10/= for the days he was so engaged. The said wages were subsequently revised and was raised to Rs. 20/= a day. The petitioner claims that since 5th May, 1986, he has been serving regularly every day. He has, therefore, claimed a right to regularization in service in the regular pay-scale on the principle of parity of pay.

4. Other similarly situated Additional Shroffs had preferred writ petitions being Special Civil Applications Nos. 2888 of 1994 and 10485 of 1996 for identical reliefs. The said writ petitions have been disposed of by the learned Single Judge [Coram : Mr. Justice S.K Keshote] on 11th September, 1997. Under the said judgment, the reliefs prayed for have been denied. However, the learned Judge has observed that, '...In these offices, when services of part timers or daily wagers are required as helping hand, then such persons should be selected by open marked selection and so long as their work is satisfactory, work should be given to them. After a reasonable period of working, say four to five years, one should be considered for regular appointment alongwith persons whose names have been called from employment exchange or applications are invited from the open marked and in regular selection, due weightage should be given to such persons. It is also advisable for respondents to prescribe a reasonable quota for this class of persons in regular employment. However, only those daily wagers or part timers would be entitled for regular employment whose appointments have been made in that capacity after open market selection and not the persons who have been given back door entry, but qualified for preferential consideration in regular employment. This exercise has to be undertaken by respondents how and as and when regular appoints are to be made for this class of employees in the Department, these persons should be considered and preference should

be given to them while undertaking the aforesaid exercise. This procedure may take long time because it depends on availability of the post. However, the amount of Rs. 20/= per day is hardly a sufficient amount. though it is true, in view of the Hon'ble Supreme Court's decision aforesaid, they may not get parity in the pay scale, but at the same time to give them only a nominal amount totally isolated of what the actual pay scale is there is also not justified. Though these persons may work as daily wagers in future but the calculation of the pay scale of the post plus Dearness Allowance at the prevailing rate and after totalling both, the daily wages may be calculated. If that is done, then they may have some sizeable amount as when their services are taken, to meet out expenses of their life. I am not deciding the question that the petitioners are working for full time, or what the learned counsel for the respondents contended, for four hours. This amount should be paid by considering each case on hourly basis also i.e., to say, if they work for four hours or less, they may be paid accordingly and if they work for more than four hours, payment shall be made accordingly.'

5. The aforesaid judgment has been confirmed in Letters Patent Appeal No. 1542 of 1997. In view of the said judgment, no order is required to be made on this petition except that the observations made in the said petitions and the directions issued therein reproduced hereinabove shall also be applicable to the petitioner herein. Subject to the above observations and directions, this petition is disposed of.

6. Mr. Adesara has submitted that inspite of the interim order made on this petition, the service of the petitioner has been terminated on 17th June, 1998. Be it noted that the petitioner has moved a contempt proceeding against the termination of his service. I, therefore, express no opinion whether the termination of service of the petitioner herein is in violation of the interim order or not.

7. By way of amendment, the petitioner has also challenged the validity of the Government Resolution dated 11th June, 1998. Under the said Resolution, for the reasons recorded in paragraphs 4 and 5 of the said Resolution, the Government has decided to discontinue the practice of engaging Additional Shroffs. The only contention raised is that the said resolution has been passed with a view to circumventing the orders made by this Court and with a view to depriving the Additional Shroffs of the higher wages and regular appointment in

the Government, I see no merits in this contention. It is a matter of policy and does not call for interference by this Court. Further, it is not disputed that the petitioner was not appointed after regular selection or by giving an opportunity to other eligible candidates. Petitioner's appointment thus having not been made in accordance with the relevant rules, he cannot claim a right to employment. The challenge to the aforesaid resolution is, therefore, rejected. Petition is dismissed. Rule is discharged.

8. Civil Applications Nos. 9152 of 1999 and 12214 of 1999 are disposed of.

Prakash*